



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J. C. Kimberly Company

File: B-255018.2

Date: February 8, 1994

J. William Eshelman, Esq., Schmeltzer, Aptaker & Shepard, for the protester.
Cynthia Guill, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly rejected as late a hand-carried bid received after the bid opening officer declared the time for bid opening as shown on the bid opening room clock.

DECISION

J. C. Kimberly Company protests the rejection of its bid as late under invitation for bids (IFB) No. N62467-92-B-M448, issued by the Department of the Navy for the repair of manhole 6-2 at the Naval Submarine Base, Kings Bay, Georgia.

We deny the protest.

Bid opening was scheduled for 2:30 p.m., September 14, 1993, and the IFB provided that hand-carried bids were to be deposited in the bid box located in Room 1342 of Building 1011 at Kings Bay. The events regarding the bid opening and the agency's refusal to accept Kimberly's bid do not appear to be in dispute. At 2:10 p.m., both the time/date stamp clock and the bid opening room clock were synchronized to the Naval Observatory clock in Washington, D.C. A few minutes later, the bid opening room clock fell off the wall and stopped. At 2:25 p.m., the bid opening room clock was again synchronized with the Naval Observatory clock and rehung on the wall.

At approximately 3 minutes before the bid deadline, the protester's representative entered the building and proceeded to the Navy procurement clerk's desk, located approximately 15 steps from the front door, and handed the procurement clerk three bids to time/date stamp. These bids were time/date stamped 2:29 p.m. and immediately returned to

Kimberly's representative.¹ The clerk then directed the representative to the bid opening room (Room 1342), which was located around the corner, approximately five steps away.

The clock in the bid opening room reached 2:30 p.m., and the bid opening officer announced that the time for receipt of bids had passed and no more bids would be accepted. Kimberly's representative entered the bid opening room after this announcement and attempted to submit its bid, which was refused. Kimberly's representative then exited the room and tendered the bids to the clerk, who also refused them. Kimberly's representative then reentered the bid opening room and delivered the bids. Kimberly's bid was later opened and determined to be the low bid. However, after some consideration, the bid was rejected as late by the Navy.

The protester argues that its hand-carried bid remained in the agency's control from the time that its representative handed the bid over to the procurement clerk to be time/date stamped, and thus was timely submitted. The protester also argues that the time/date stamp is presumptive evidence of the time of receipt.

Under Federal Acquisition Regulation § 14.402-1(a), the bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. The bid opening officer's declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. Wyoming Sawmills, Inc., B-248331, July 22, 1992, 92-2 CPD ¶ 45; Swinerton & Walberg Co., B-242077.3, Mar. 22, 1991, 91-1 CPD ¶ 318. Here, the bid opening officer used the clock in the bid opening room to determine that the time set for bid opening had arrived and then announced that it was time for bid opening. Since the contracting officer had verified the bid opening room clock with the Naval Observatory, the bid opening officer acted reasonably in determining when the time set for opening bids had arrived. Id.

Contrary to the protester's contention, nothing in the solicitation, federal regulations or decisions of our Office requires that the timely receipt of hand-carried bids be

¹The agency explains that normally bidders would time/date stamp their bids at a counter located near the procurement clerk's desk, and would then carry their bids to the bid room and deposit them in the bid box. However, because the regular time/date stamp was broken, the agency was using a different time/date stamp that had to be operated by the clerk.

established only by a time-date stamp or other documentary evidence maintained by the government installation. K. L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79; see Reliable Builders, Inc., B-249908.2, Feb. 9, 1993, 93-1 CPD ¶ 116. Rather, where the issue is whether a hand-carried bid is timely received, all relevant evidence in the record may be considered. Here, the record shows that the bid was tendered in the bid opening room after the contracting officer properly announced bid opening. Thus, the bid was properly rejected as late. K. L. Conwell Corp., supra.

We also disagree with the protester's contention that the agency took control of Kimberly's bid when the procurement clerk time/date stamped the bid and then returned it to the protester's representative. This brief exchange of the bid between the procurement clerk and the protester's representative did not constitute the relinquishment of control of the bid so as to be considered submission of the bid. Compare J.C.N. Constr. Co., Inc., B-250815, Feb. 23, 1993, 93-1 CPD ¶ 166 (bid handed to and returned by agency receptionist outside designated bid opening room does not constitute submission of the bid) with Reliable Builders, Inc., supra (protester relinquished control of the bid to receiving clerk at place designated for receipt of hand-carried bids, prior to the contracting officer's announcement of bid opening).

While the protester argues that the acceptance of its bid would afford the government a significant cost savings, a late bid must be rejected, even though it may be more advantageous to the government than those timely received, since the maintenance of confidence in the integrity of the government procurement system is of greater importance than the possible advantage to be gained by considering a late bid in a particular procurement. Swinerton & Walberg Co., supra.

The protest is denied.

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 for Acting General Counsel